

201 KAR 20:460. Declaratory rulings.

RELATES TO: KRS 314.105, 314.131(2)

STATUTORY AUTHORITY: KRS 314.105(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.105(1) authorize the board to issue declaratory rulings. KRS 314.105(4) authorizes the board to promulgate an administrative regulation or procedures for submission, consideration, and disposition of a petition for a declaratory ruling. This administrative regulation establishes those procedures.

Section 1. Definitions. (1) "Board" means the board of nursing.

(2) "Declaratory ruling" means a ruling by the board that addresses a question properly submitted to the board for consideration.

(3) "Person" means an individual, an agency, association, corporation, or any other entity.

Section 2. Form of Petition. (1) Any person may file a petition with the Board of Nursing for a declaratory ruling pursuant to KRS 314.105.

(2) The petition shall be signed by one (1) or more persons, with each signer's mailing address and telephone number, and if available, fax number and email address, clearly indicated. If a person signs on behalf of a corporation or association, that fact shall also be indicated. The signer shall date the petition.

(3) The petition shall contain:

(a) A clear and concise statement of all relevant facts on which the ruling is requested;

(b) A citation and the relevant language of the specific statutes, administrative regulations, decisions, orders, or other written statements of law or policy whose applicability is questioned, and any other relevant law;

(c) The questions petitioner wants answered, stated clearly and concisely;

(d) The petitioner's desired answers to the questions and a summary of the rationale supporting the desired answers;

(e) Any supportive documentation or research; and

(f) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

Section 3. Consideration. (1) The board may schedule an informal meeting between the petitioner, any interested persons, and the board, a member of the board, or a member of the staff of the board, to discuss the question raised.

(2) In rendering its ruling, the board shall:

(a) Consider all materials submitted with the petition;

(b) Consider any relevant document, data, or other material; and

(c) Consider comments from the board's staff.

(3) The board may:

(a) Consult experts or other individuals as it deems necessary; and

(b) Require argument of the question or permit the introduction of evidence.

Section 4. Issuance of Ruling or Refusal to Issue Ruling. (1) The board shall issue a declaratory ruling in response to the petition, unless one (1) of the provisions of subsection (2) of this section applies.

(2) The board shall not issue a declaratory ruling if one (1) of the following reasons applies:

- (a) The board does not have jurisdiction over the questions presented in the petition;
- (b) The questions presented by the petition are also presented in a disciplinary case, or other board or judicial proceeding that may definitively decide them;
- (c) The questions presented by the petition would more properly be resolved in a different type of proceeding;
- (d) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling;
- (e) There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances;
- (f) The petitioner requests the board to determine whether a statute is unconstitutional; or
- (g) The board concludes that a ruling would not be in the public interest. (27 Ky.R. 2605; Am. 3080; eff. 6-8-2001.)